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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

ENTERED  
JUL - 5 2012  
IN REGISTER BY RRM

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

CASCADE CONSTRUCTION  
MANAGEMENT, LLC, an Oregon limited  
liability company, for itself and derivatively on  
behalf of Aspen Pacific City LLC, an Oregon  
limited liability company, a nominal plaintiff,

Plaintiff,

v.

CHARLES A. SIDES, STEPHEN P. LIPPOLD,  
JOSHUA A. WELLS, and ASPEN MOOK LLC,  
an Oregon limited liability company,

Defendants.

**08447**

Case No. **1207-08447**

COMPLAINT - Actions On Capital  
Call, For Accounting and Damages,  
Member Expulsion and Manager Removal  
And Dissolution Of LLC

Pursuant To Ch 595, Sec 15 (1)(d)  
Filing Fee is \$755.00

(Not Subject To Mandatory Arbitration)

Plaintiff, for itself and derivatively on behalf of Aspen Pacific City LLC, alleges:

*(First Claim For Relief- Derivative Claim Against All Defendants For Capital Contributions)*

1.

Cascade Construction Management, LLC, ("Cascade" hereafter), is now and has been, at  
all times material herein, an Oregon limited liability company and a member of Aspen Pacific  
City LLC.

2.

Plaintiff, Aspen Pacific City LLC, (hereafter the "LLC") is now and has been at all times

1 material herein an Oregon limited liability company.

3 3.

4 Defendant, Aspen Mook LLC, (hereafter "Aspen Mook") is now and has been at all times  
5 material herein an Oregon limited liability company, and a member of the LLC.

6 4.

7 Defendants, Charles A. Sides (hereafter "Sides"), Stephen P. Lippold, (hereafter  
8 "Lippold") and Joshua A. Wells (hereafter "Wells"), are now and have been at all times material  
9 herein members of the LLC.

10 5.

11 The operation of the LLC is subject to the Restated Operating Agreement of Aspen  
12 Pacific City LLC, as amended by the First, Second, Third and Fourth amendments to the  
13 agreement, (Hereafter, collectively the "Operating Agreement"), and the Oregon Limited  
14 Liability Company Act. A true copy of the Operating Agreement is attached hereto as Exhibit  
15 "1". As per the terms of the Operating Agreement, the parties consented to this court's  
16 jurisdiction and venue.

17 6.

18 Pursuant to the terms of the Operating Agreement: 1. The LLC is co-managed with Co-  
19 manager, Tim Kerr, appointed by member, Cascade, and Co-manager, Sides, appointed by the  
20 remaining members of the LLC; 2. All actions and all decisions shall require the consent of both  
21 Co-managers; and 3. All documents signed on behalf of the LLC must be signed by each Co-  
22 manager.

23 7.

24 Pursuant to section 2.10 of the Operating Agreement, as amended, "The co-Managers  
25 may call for additional capital contributions from the Members. Any capital call must be  
26 approved by both co-Managers, provided, however, that approval of a capital call proposed by  
27 one of the co-Manager's shall not be unreasonably withheld, delayed or conditioned if the capital

1 call is made in good faith and is necessary to either ( a) meet an obligation of the LLC or (b)  
2 complete development of the Property in a manner reasonably consistent with a development  
3 budget approved in writing by all of the members of the LLC. Cascade shall contribute one half  
4 of the capital called for and the Original Members shall contribute the other one half of the  
5 capital called for, allocated among the Original Members and Aspen [Mook] based on their  
6 interest in the profits and losses of the LLC.”

7 8.

8 At all times material herein the LLC has been under a loan obligation to Columbia State  
9 Bank (hereafter the “Lender”) requiring payments to the Lender of principal, interest, costs and  
10 fees, (hereafter, the “Bank Loan”). The Bank Loan is secured by a first Trust Deed on the LLC’s  
11 principal asset of 53 acres of real estate for residential development located in Tillamook County,  
12 Oregon. At all times material herein, the LLC has been without money to service the Bank loan,  
13 requiring the LLC to make a capital call, borrow money or go into default on the Bank Loan. On  
14 or about November 10, 2011, the Bank Loan obligation became due by its terms in the amount of  
15 \$2,801,213.09. Prior to said date, and thereafter, Co-Manager, Tim Kerr, on behalf of the LLC  
16 entered into negotiations with the Lender to extend the terms of the Bank Loan. The Lender  
17 tentatively agreed that the Bank Loan could be extended until November 10, 2014, so long as the  
18 LLC entered into a modification of the Bank Loan agreements that require the LLC to make past  
19 due interest payments, monthly interest payments, principal reduction payments, easement  
20 escrow payment and payment for the Bank’s fees and costs incurred in the Bank Loan  
21 modification..

22 9.

23 In order to meet expected payments for the modification of the Bank Loan, the Co-  
24 Managers of the LLC, at a meeting of the Co-managers held on January 27, 2012, approved a  
25 capital call of Three Million Dollars (\$3,000,000.00), (hereafter “Capital Call”) to be used to  
26 make the anticipated payments to the Bank Loan, as modified, and to meet the other anticipated  
27 obligations of the LLC through December 31, 2012. The Capital Call required members to make

the following scheduled payments:

Name of Member	1st Installment due Feb 10, 2012	2d Installment due July 1, 2012
Cascade Construction Management, LLC	\$750,000.00	\$750,000.00
Charles A. Sides	\$492,000.00	\$492,000.00
Joshua A. Wells	\$ 61,500.00	\$ 61,500.00
Stephen P. Lippold	\$ 61,500.00	\$ 61,500.00
Aspen Mook, LLC	\$135,000.00	\$135,000.00

Pursuant to the Co-Managers Capital Call, a Notice Of Call For Additional Capital Contributions, was sent to all members of the LLC requiring the members to make punctual payment of their proportionate shares of the Capital Call. A true copy of said Notice dated, January 27, 2012, is attached hereto as Exhibit "2" and by this reference incorporated herein. Thereafter, only Cascade timely tendered payment of its proportionate share of the Co-Managers Capital Call.

10.

The remaining members of the LLC, defendants herein, are in default of the Operating Agreement due to their failure to:

1. Make a punctual payment of their proportionate share of the Capital Call; or
2. Unreasonably withholding or delaying a capital call for \$3,000,000.00 proposed by one of the Co-manager's, made in good faith and necessary to meet an obligation of the LLC.

11.

There is now due and owing to the LLC from defendants the following sums together with interest thereon at the rate of 9% per annum from February 10, 2012 until paid:

Sides: \$492,000.00

Aspen Mook: \$135,000.00

Wells \$ 61,500.00

Lippold \$ 61,500.00.

///

12.

Prior to filing of this Complaint, Co-Manager, Tim Kerr, delivered a Notice of Demands and Special Meeting of Members and Managers (hereafter "Notice/Demand"), to Sides, Aspen Mook, Lippold and Wells for expressed purposes stated therein. A true copy of the Notice is attached hereto as Exhibit "3" and by this reference incorporated herein. One of the expressed purposes of that meeting was: "To authorize the LLC to proceed with a lawsuit for payment of capital contributions against those members that have failed to pay their capital contributions authorized by the LLC's managers as set forth in the January 27, 2012, Notice of Call For Capital Contributions...coupled with an action seeking expulsion of those members who have willfully failed to pay contributions that have made it reasonably impracticable to carry on the business of the LLC with those members". Thereafter, Co-Manager, Tim Kerr, consented to filing the lawsuit for the claims stated in the Notice/Demand. Sides has failed, refused or ignored plaintiff's demand to consent to the filing of the lawsuit as set forth in the Notice/Demand. As a result of Sides' failure to consent to the filing of the lawsuit, plaintiff has filed this claim derivatively, on behalf of the LLC, in accordance with ORS 63.801.

13.

Pursuant to section 11.2 of the Operating Agreement, plaintiff, as the prevailing party, is entitled to an award of its attorneys' fees and costs incurred herein.

*(Second Claim For Relief- Derivative Claim Against Sides For Accounting and Damages )*

14.

Plaintiff realleges paragraphs 1, 2, 4, 5, 6, and 13.

15.

The Operating Agreement provides in section 1. of the Fourth Amendment to it that: "If at any time there is an amount outstanding on the KERR Loan, it is hereby acknowledged and agreed that the LLC shall make no cash distributions of any kind to its Members unless and until any such amount outstanding on the KERR Loan has been repaid in its entirety." At all times material herein the KERR Loan has been unpaid and remains unpaid to date.

16.

On or about April 27, 2010, Sides, without the consent of co-Manager, Tim Kerr, executed and delivered a Trust Deed to John Storkel, Trustee, and Jack Yarbrough, Beneficiary, pledging LLC real property in Jackson County, Oregon, to secure a purported \$350,000.00 LLC' Promissory Note payable to Jack Yarbrough, (hereafter the "Promissory Note and Trust Deed"). A true copy of the Trust Deed is attached hereto as Exhibit "4" and by this reference incorporated herein.

17.

Sides is in default of the Operating Agreement by taking the following actions without the consent of Co-Manager, Tim Kerr:

- A. Executing and delivering the Promissory Note and Trust Deed to Jack Yarbrough; and
- B. For taking money/instrument(s) belonging to the LLC in the purported amount of \$350,000.00, from the loan proceeds evidenced and secured by the LLC's Promissory Note and Trust Deed.

18.

Plaintiff has made demand on Sides for an accounting of the loan proceeds and all loan documentation associated with LLC's Promissory Note and Trust Deed. Sides has failed or refused to provide plaintiff with the accounting and loan documentation.

19.

Plaintiff has been damaged in the amount of all money Sides received in exchange for the LLC's Promissory Note and Trust Deed, purportedly in the sum of \$350,000.00, plus interest thereon at the rate of 9% per annum from April 27, 2010, until paid or in the amount of the lien of the Trust Deed against the LLC's real property located in Jackson County, Oregon, whichever is greater.

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20.

Prior to filing of this Complaint, Co-Manager, Tim Kerr, delivered a Notice of Demands and Special Meeting of Members and Managers (hereafter "Notice/Demand"), to Sides, Aspen Mook, Lippold and Wells for expressed purposes stated therein. A true copy of the Notice is attached hereto as Exhibit "3" and by this reference incorporated herein. One of the expressed purposes of that meeting was: "To authorize the LLC to proceed with a lawsuit against member-manager, Charles Sides, for an accounting and for all damages and relief owing to the LLC due to a trust deed given by Mr. Sides against LLC Property in Jackson County, Oregon without the required authorization from Cascade, a co-manager of the LLC, and Mr. Sides use of the \$350,000 loan proceeds which are purportedly secured by the trust deed coupled with an action seeking removal of Mr. Sides as manager and expulsion as a member due to his wrongful conduct affecting the business and affairs of the LLC." Thereafter, Co-Manager, Tim Kerr, consented to filing the lawsuit for the claims stated in the Notice/Demand. Sides has failed, refused or ignored plaintiff's demand to consent to the filing of the lawsuit as set forth in the Notice/Demand. As a result of Sides' failure to consent to the filing of the lawsuit, plaintiff has filed this claim derivatively, on behalf of the LLC, in accordance with ORS 63.801.

*(Third Claim For Relief-Derivative Claim Against Sides for Conversion)*

21.

Plaintiff realleges paragraphs 1, 2, 4, 5, 6, 15, 16, 18, and 20.

22.

Sides took money/instrument(s) belonging to the LLC in the purported amount of \$350,000.00 from the loan proceeds evidenced and secured by the LLC's Promissory Note and Trust Deed. In so doing, Sides interfered with the LLC's right to possession of the loan proceeds.

23.

Plaintiff has been damaged in the amount of all money/instrument(s) Sides received in exchange for the LLC's Promissory Note and Trust Deed, purportedly in the sum of \$350,000.00, plus interest thereon at the rate of 9% per annum from April 27, 2010, until paid.

1                    *(Fourth Claim For Relief-Derivative Claim Against Sides for Unjust Enrichment)*

2                    *(An Alternative Claim To The Second and Third Claims For Relief)*

3                    24.

4                    Plaintiff realleges paragraphs 1, 2, 4, 5, 6, 15, 16, 18, and 20.

5                    25.

6                    Sides used the money/instruments he obtained from the LLC's loan proceeds for Sides  
7 benefit.

8                    26.

9                    Sides has failed or refused to account for and remit to the LLC the loan funds he  
10 obtained, purportedly in the amount of \$350,000.00 as stated in the Trust Deed executed by  
11 Sides.

12                   27.

13                   Sides would be unjustly enriched if allowed to retain the loan funds and interest thereon  
14 without requiring him to pay the LLC for the benefit he is aware that he received, which under  
15 the facts as alleged above, would be \$350,000.00, plus interest at the rate of 9% per annum from  
16 April 27, 2010.

17                   28.

18                   Plaintiff does not have an adequate remedy at law.

19                   *(Fifth Claim For Relief-Action For Expulsion Of Members)*

20                   29.

21                   Plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, and 19.

22                   30.

23                   Due to defendants' actions, as alleged above, defendants have either: 1. Willfully or  
24 persistently committed a material breach of the Operating Agreement or otherwise breached a  
25 duty owed to the limited liability company or the members to the extent that it is not reasonably  
26 practicable to carry on the business or affairs of the LLC with the defendants; or 2. Been guilty of  
27 wrongful conduct that adversely and materially affected the business or affairs of the LLC.



31.

Based on defendants' actions as alleged above, plaintiff makes application to the court to expel defendants as members of the LLC as provided under ORS 63.209(1)(b)(A) & (B).

*(Sixth Claim For Relief-Claim For Removal Of Sides As Co-Manager)*

32.

Plaintiff realleges paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, and 19.

33.

Due to Sides' actions, as alleged above, he has breached his fiduciary duties as a Co-manager of the LLC and been guilty of wrongful conduct that adversely and materially affected the business and affairs of the LLC.

34.

Based on Sides' actions, as alleged above, plaintiff makes application to the court to have Sides removed as Co-manager of the LLC.

*(Seventh Alternative Claim For Relief-Claim For Dissolution of LLC)*

In the event plaintiff's First or Fifth Claims For Relief is denied, plaintiff alleges as an alternative claim:

35.

Plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, and 19.

36.

Based on defendants' actions, as alleged above, it is not reasonably practicable to carry on the business or affairs of the LLC in conformance with the Operating Agreement.

37.

Based on defendants' actions, as alleged above, plaintiff makes application to the court to dissolve the LLC as provided under ORS 63.671 and ORS 63.661(2).

WHEREFORE, plaintiff prays for judgment as follows:

1. On its First Claim for Relief, derivatively on behalf of the LLC, against defendants:

- 1 a. For following sums together with prejudgment interest thereon at the rate  
2 of 9% per annum from February 10, 2012 until paid:

3 Sides: \$492,000.00

4 Aspen Mook: \$135,000.00

5 Wells \$ 61,500.00

6 Lippold \$ 61,500.00.

- 7 b. For plaintiff's reasonable attorneys' fees, and court costs incurred; and

- 8 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
9 each item awarded, from the date of judgment entry until paid.

10 2. On its Second Claim for Relief, derivatively on behalf of the LLC, against  
11 defendant, Sides:

- 12 a. Judgment requiring Sides to account to plaintiff for all loan documentation  
13 and all sums of money that Sides received from the LLC's Promissory  
14 Note and Trust Deed given to Jack Yarbrough and for judgment for any  
15 sum(s) taken by Sides that should have been paid to the LLC together with  
16 interest at the rate of 9% per annum from April 27, 2010 until paid or in  
17 the amount of the lien of the Trust Deed against the LLC's real property  
18 located in Jackson County, Oregon, whichever is greater;

- 19 b. For plaintiff's reasonable attorneys' fees, and court costs incurred; and

- 20 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
21 each item awarded, from the date of judgment entry until paid.

22 3. On its Third Claim for Relief, derivatively on behalf of the LLC, against  
23 defendant, Sides:

- 24 a. For judgment for any sum(s) taken by Sides that should have been paid to  
25 the LLC together with interest at the rate of 9% per annum from April 27,  
26 2010 until paid;

- 27 b. For plaintiff's court costs incurred; and

- 1 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
2 each item awarded, from the date of judgment entry until paid.

3 4. Alternatively to its Second and Third Claims For Relief, on its Fourth Claim for  
4 Relief, derivatively on behalf of the LLC, against defendant, Sides:

- 5 a. For judgment for any sum(s) taken by Sides that should have been paid to  
6 the LLC together with interest at the rate of 9% per annum from April 27,  
7 2010 until paid;  
8 b. For plaintiff's court costs incurred; and  
9 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
10 each item awarded, from the date of judgment entry until paid.

11 5. On its Fifth Claim for Relief against defendants:

- 12 a. Judgment expelling defendants as members of the LLC;  
13 b. For plaintiff's reasonable attorneys' fees, and court costs incurred; and  
14 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
15 each item awarded, from the date of judgment entry until paid.

16 6. On its Sixth Claim for Relief against defendant, Sides:

- 17 a. Judgment removing defendant, Sides, as a manager of the LLC;  
18 b. For plaintiff's reasonable attorneys' fees, and court costs incurred; and  
19 c. For post-judgment interest at the rate of nine percent (9%) per annum on  
20 each item awarded, from the date of judgment entry until paid.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

- a. Judgment dissolving the LLC;
- b. For plaintiff's reasonable attorneys' fees, and court costs incurred; and
- c. For post-judgment interest at the rate of nine percent (9%) per annum on each item awarded, from the date of judgment entry until paid.

THOMAS K. WOLF, OSB #794558  
tom@tkwllc.com  
Attorney for Plaintiff  
Dated: June 29, 2012

RESTATED OPERATING AGREEMENT OF  
ASPEN PACIFIC CITY LLC

By execution hereof, the undersigned members of Aspen Pacific City LLC (the "LLC") and the LLC hereby adopt this Restated Operating Agreement as the operating agreement of the LLC replacing in its entirety any other Operating Agreement adopted by the LLC.

1. Organization.

1.1 The Articles of Organization for the LLC, a copy of which are attached as Exhibit "A", was filed with the Oregon Secretary of State, Corporate Division on June 1, 2006, and are hereby ratified and approved.

1.2 Charles A. Sides ("Mr. Sides") has assigned all of his interest in the Owner's Sale Agreement and Earnest Money Receipt dated as of April 27, 2006 between Charles A. Sides, and/or Assigns as "Purchaser" and Arnold Meyerstein, Trustee of the Meyerstein Trust dated June 10, 1993 as "Seller" (the "Agreement"). The business of the LLC shall be limited to the acquisition and development of real property described in the Agreement, provided, however, that with the unanimous consent of the members the LLC may engage in any other lawful business permitted under the Oregon Limited Liability Company Act ("Act").

1.3 The members have formed the LLC under the Act and intend to form a limited liability company under the Act and no other form of entity.

1.4 All property of the LLC shall be owned by the LLC as an entity and held in its own name and no member shall have any ownership interest in such property.

2. Members.

2.1 The members of the LLC are Charles A. Sides, Stephen P. Lippold, Joshua A. Wells (Mr. Sides, Mr. Lippold and Mr. Wells are collectively referred to in this Operating Agreement as the "Original Members") and Aspen Mook LLC ("Aspen"). The investments of the members are as follows:

(a) The Original Members shall contribute their interest in the Agreement, in the initial deposit of \$250,000 paid to the Seller and in the entire work product relating to the Property. The Original Members contribution shall be allocated among the Original Members with eighty percent (80%) allocated to Mr. Sides and ten percent (10%) to each of Mr. Lippold and Mr. Wells, with the contribution having an agreed value, for purposes of establishing initial capital accounts, of \$350,000;

(b) Aspen shall loan \$2,360,160 to the LLC (the "Aspen Loan"). The terms of the Aspen Loan are set forth in Section 15.2 of this Operating Agreement. The

value of this contribution for purposes of establishing Aspen's initial capital account is \$1,800.

2.2 New members may be admitted as members with the unanimous written consent of members the LLC.

2.3 No member shall have any power or authority to bind the LLC unless such member has been authorized by the LLC to act as an agent of the LLC in accordance with this Agreement.

2.4 Each member's liability shall be limited as set forth in this Operating Agreement, the Act and other applicable law. Unless a member has agreed to a specific guaranty in writing, no member or any affiliate of a member will be personally liable, merely as a member, for any debts or losses of the LLC beyond the member's respective contributions and any obligation of the member under the terms of this Operating Agreement to make additional contributions, except as otherwise provided by law.

2.5 Except for liabilities or losses incurred in connection with the guaranty given by Mr. Sides to Aspen, the LLC shall indemnify the members for all costs, losses, liabilities and damages paid or accrued by a member in connection with the business of the LLC to the fullest extent provided or allowed by law.

2.6 Any member may engage independently or with others in other business and investment ventures of every nature and description and shall have no obligation to account to the LLC for such business or investments or for business or investment opportunities.

2.7 An individual capital account shall be maintained for each member. Each member's capital account shall be (a) credited with all capital contributions by such member and the member's distributive share of all income and gain and (b) charged with the amount of all distributions to such member and the member's distributive share of losses and deductions. Capital accounts shall be maintained in accordance with all applicable federal tax accounting principles, including but not limited to the principles set forth in Treasury Regulation §1.704-1(b)(2)(iv). No interest shall be paid on a member's capital contributions.

2.8 Notwithstanding anything in this Agreement to the contrary, no loss, deduction or expenditure described in Internal Revenue Code ("IRC") §705(a)(2)(B) shall be allocated to any member if such allocation would cause such member to have or increase a deficit capital account. The amount of the loss, deduction or IRC §705(a)(2)(B) expenditure which would have caused a member to have or increase a deficit capital account shall instead be allocated pro rata to the capital accounts of the other members who do not have deficit capital accounts until their capital accounts are reduced to zero and thereafter to all members in accordance with their ownership interests.

2.9 If any member unexpectedly receives any adjustments, allocations of

distributions described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6) which create or increase a deficit capital account of the member, then items of LLC income and gain, consisting of a pro rata portion of each item of LLC income, including gross income and gain for such year and, if necessary, for subsequent years, shall be specially credited to the capital account of the member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit capital account so created as quickly as possible. It is the intent that this section be interpreted to comply with the alternative test for economic effect set forth in Treasury Regulation §1.704-1(b)(2)(ii)(d).

2.10 Any member may call for additional capital contributions from the members provided such call is made in good faith and is necessary to either (a) meet an obligation of the LLC or (b) complete the development of the Property. Mr. Sides will be the sole member funding the capital calls although Aspen may, but shall be under no obligation to increase the amount of the Aspen Loan to the LLC to cover additional cash needs of the LLC.

3. Allocation of Profits and Losses. The first One Hundred Eighty Thousand Dollars (\$180,000) of profits shall be specially allocated to Aspen, plus 14.4% per year on this amount until paid. The amount of this special allocation shall also increase by an amount equal to 7.2% of the balance on July 1, 2007 and at the end of each eleven (11) month period thereafter. After attribution of this special allocation, Eighteen percent (18%) of the remaining profits and of all losses of the LLC shall be allocated to Aspen and eighty-two percent (82%) of the remaining profits and of all losses of the LLC shall be allocated to the Original Members. The profits and losses allocated to the Original Members shall be allocated among the Original Members with eighty percent (80%) allocated to Mr. Sides and ten percent allocated (10%) to each of Mr. Lippold and Mr. Wells.

4. Distributions. Excess cash shall be distributed not less frequently than monthly, provided, however, that excess cash resulting from the sale of any asset of the LLC shall be distributed within two (2) business days after the close of such sale. Excess cash, for purposes of determining the amount to be distributed, shall mean all funds of the LLC minus (a) an amount necessary to pay all known expenses of the LLC, and (b) such reasonable reserves for future liabilities as may be established by the Manager. Distributions shall be made first to Aspen until it has received an amount equal to its special allocation, and thereafter all distributions shall be made pro-rata to the members in accordance with each members share of the profits of the LLC.

5. Meetings of the Members.

5.1 A meeting of the members shall be held if any member signs, dates and delivers to the other members a written request for a meeting.

5.2 Meetings of the members shall be held at any place within the Portland, Oregon metropolitan area designated by the member calling the meeting. Meetings may also be held by telephone conference. At any meeting, any member not physically present may attend, vote and participate by telephone.

5.3 The member calling the meeting shall provide written notice of any meeting of the members to each member not more than sixty (60) nor less than ten (10) days before the meeting date. The notice must include a description of the purpose for which the meeting is called.

5.4 Any action of the members which can be taken at a meeting of the members may be taken without meeting if the proportion of members which would have been required to approve such action at a meeting consents, in writing, to such action.

5.5 Except where authority has been expressly delegated pursuant to this Operating Agreement, any decision of the members shall require the unanimous vote of the members.

6. Management.

6.1 Subject to Sections 6.2, 6.3 and 6.4 of this Operating Agreement, the LLC shall be managed by a Manager or Managers designated by the members

6.2 Subject to the provisions of Section 6.4 of this Operating Agreement, the LLC shall be managed by two co-Managers, one of whom shall be appointed by Aspen and one of whom shall be appointed by the Original Members. Subject to the provisions of Sections 6.4 of this Operating Agreement, all actions and all decisions shall require the consent of both co-Managers and all documents signed on behalf of the LLC must be signed by a representative of each co-Manager. Either co-Manager may be changed at any time by written notice to the LLC from the parties or entity appointing such co-Manager. Until other Co-Managers are designated, Steve Rosenberg shall serve as the co-manager appointed by Aspen and Mr. Sides shall serve as the co-Manager appointed by the Original Members. The co-Managers may make reasonable delegations of ministerial functions, to other individuals or entities, which delegations must be described in a writing signed by both co-Managers.

6.3 If, while the LLC is managed by co-Managers, there is a material disagreement among the co-Managers relating to a decision which either member reasonably believes involves a decision critical to the completion of the planned develop of the Property, the co-Managers shall exercise their best efforts to resolve the dispute through direct discussions and, if requested by either co-Manager, participation in mediation through the auspices of a qualified mediator. If either member reasonably believes such discussions are no longer productive and that mediation has failed, such member may initiate a Buy-Sell Auction pursuant to the provisions of Section 17 of this Operating Agreement.

6.4 Aspen shall have the right to take over sole management of the LLC if any of the events set forth below occur. Aspen may exercise this right by written notice to Mr. Sides setting forth the basis for its exercise of such right. Immediately upon delivery of such notice, without the necessity of any further action or judicial proceeding, Mr. Sides shall cease to be a



co-Manager of the LLC and Aspen shall become the sole Manager, with full and exclusive authority to act on behalf of the LLC in all respects. Aspen will have the right to become sole Manager of the LLC upon the occurrence of any of the following events: (a) failure of the purchase of the Property to close during the term of the Agreement as such term may be extended, or (b) the occurrence of an event of default of the Aspen Loan. The Original Members shall sign and deliver to Aspen's counsel, Josselson, Potter & Roberts, a certificate, in the form attached, which may be delivered to Aspen if Aspen exercises its right to take over sole manager of the LLC pursuant to this Section 6.4.

6.5 Without limiting the generality of its authority, it is expressly agreed that if Aspen has taken over management of the LLC pursuant to Section 6.4 of this Operating Agreement, it shall have the right to list the Property for sale with a broker of its choice, including one affiliated with Aspen, for a price and upon terms determined by Aspen in its sole discretion and may cause the LLC to sell all or any of the assets of the LLC to any third party not affiliated with Aspen for any price and upon any terms determined by Aspen, in Aspen's sole and absolute authority. It is expressly understood that, in exercising the right to sell the assets of the LLC, Aspen may sell the assets for a price that would result in a loss to the LLC and which might not result in any distribution to the Original Members.

6.6 If Aspen has taken over the management of the LLC pursuant to Section 6.4 of this Operating Agreement, Aspen may request from Mr. Sides that he execute and deliver to Aspen or to any third party identified by Aspen a statement confirming that Aspen has full authority to bind the LLC in all respects.

6.8 Each Manager shall be reimbursed by the LLC for all reasonable expenses incurred by them on behalf of the LLC. In this context, the co-Managers may engage such employees or agents as are necessary for the management of the LLC either directly as employees or agents of the LLC or as employees or agents of the Manager. No Manager shall receive any other compensation for its services as Manager. If Aspen has taken over management of the LLC pursuant to Section 6.5 of this Operating Agreement, Aspen shall be paid a management fee of \$1,800 per month, which shall be treated as an expense of the LLC.

6.9 The members acknowledge that regardless of the financial condition of the LLC or the status of its business affairs, the filing of a petition in bankruptcy could have a materially adverse affect on the value of its assets and that such a filing is a major action which should only be undertaken in the most limited circumstances. The members therefore agree that they will not cause the LLC to file a voluntary petition in bankruptcy or assist any other party in such a filing without the express written consent of Aspen and Mr. Sides, which consent may be withheld in the sole discretion of the party, provided, however, that if Aspen has exercised its right to take over sole management of the LLC pursuant to Section 6.4 of this Operating Agreement, Mr. Side's consent shall not be required.

6.10 The members are aware that there is an actual conflict between Aspen's role as member and co-Manager of the LLC and its position as a creditor of the LLC. The members

expressly waive any claim against Aspen resulting from any claimed, actual or potential conflict between its position as a creditor of the LLC and its position as a co-manager and member, including but not limited to any actions initiate by Aspen to collect on the Aspen Loan and any action by Aspen to prevent the filing of a petition in bankruptcy. This waiver by the members was a material inducement to Aspen to become a member of the LLC and to make the Aspen Loan.

7. Accounting and Records.

7.1 The LLC's books and records and a register of the names and addresses of the members shall be maintained by the co-Managers. Each member shall have access to the books, records and register at all reasonable times.

7.2 The tax matters partner shall cause all required tax returns for the LLC to be prepared and timely filed. Within ninety (90) days after the end of each calendar year, each member shall be furnished a statement suitable for use in the preparation of the member's income tax returns, showing the amounts of any distributions, contributions, gains, and losses, profits or credits allocated to the member during the preceding year. Aspen shall serve as tax matters partner for the LLC.

8. Transfers and Withdrawals.

8.1 No member may voluntarily withdraw from the LLC or transfer all or any portion of such member's interest in the LLC without the unanimous consent of the other members. In the event any member or assignee therefrom pledges or otherwise encumbers any of such member's interests in the LLC as security, such pledge or transfer shall not constitute a transfer of the member's interest but shall only transfer the member's right to receive distributions from the LLC, if any. Notwithstanding the foregoing, it is agreed that Aspen may transfer its interest to another entity affiliated with Aspen or its members and the Original Members may transfer their membership interests to an entity owned and controlled by the Original Members. In the event either of the approved transfers occurs, the transferee shall be accepted as a substitute member of the LLC with all rights and subject to all obligations of the transferring member.

8.2 The dissolution or bankruptcy of a member shall constitute the involuntary withdrawal of the member from the LLC. Upon such withdrawal, the other members of the LLC shall have the right to (a) purchase the interest of the withdrawing member for an amount equal to the fair market value of the withdrawing member's interest, or (b) accept the successor in interest of the withdrawing member as a new member, in which case the successor shall automatically become a member subject to all of the terms and conditions of this Operating Agreement, or (c) initiate the Auction Buy-Sell provisions of Section 17 of this Operating Agreement or (d) dissolve the LLC. The remaining member or members of the LLC shall, within thirty (30) days after the date of the event causing the withdrawal, notify the representative of the withdrawing member of its election. Failure to give such notice shall constitute an election to

accept the successor in interest of the withdrawing member as a new member of the LLC.

8.3 If the LLC elects to purchase the interest of the withdrawing member pursuant to the provisions of Section 8.2(a) of this Operating Agreement, its notice shall include its determination of the fair market value of the withdrawing member's interest. This amount shall be used to determine the purchase price for the interest of the withdrawing member unless, within ten (10) days thereafter, the representative of the withdrawing member notifies the LLC that it does not agree with this valuation. Such notice must state the value determined by the representative of the withdrawing member. The LLC shall, in turn, notify the representative within ten (10) days after such notice, whether it is willing to accept the representative's valuation, in which event the representative's valuation shall be used to determine the purchase price for the withdrawing member's interest. If the LLC notifies the representative that it does not accept the representative's determination of value, the value shall be fixed by binding arbitration, to be conducted in Portland, Oregon pursuant to rules applicable to Circuit Court annexed arbitration, except that the decision of the arbitrator shall be final and not subject to appeal. The arbitrator shall value such interest with due regard for all appropriate discounts applicable to illiquid, unmarketable and minority interests. The purchase price shall be payable, in cash, within thirty (30) days after determination of the purchase price. In the event of arbitration, the party whose determination of value was furthest from the determination set by the arbitrator shall pay all of the costs of such arbitration including the reasonable attorney fees and expert witness fees of the other party.

8.4 Notwithstanding Section 8.1, the voluntary withdrawal of any member shall be effective six (6) months after written notice thereof is given to the other members and shall constitute a breach of this Agreement for which the LLC and the other members shall have the remedies provided by the Act.

9. Dissolution.

9.1 The LLC shall dissolve upon the earliest to occur of (a) approval of dissolution by unanimous agreement of the members or (b) the dissolution or bankruptcy of a member which is an entity, unless the members elect, pursuant to Section 8.2 of this Agreement, to continue the LLC or (c) such time as all of the assets of the LLC have been converted to cash or cash equivalent short term investments.

9.2 Upon the dissolution of the LLC, the co-Managers or sole Manager shall wind up the affairs of the LLC in accordance with the provisions of the Act.

9.3 Before distributing the assets of the LLC as part of a liquidation of the LLC, gain or loss on disposition shall be allocated to the member's capital accounts in accordance with sections 2.7, 2.8 and 2.9 of this Operating Agreement. Distributions in liquidation shall be made in accordance provisions of Section 4 of this Operating Agreement.

10. Amendments. The members may amend the provisions of this Operating

Agreement only by the unanimous written agreement of the members.

11. Dispute Resolution.

11.1 This Operating Agreement shall be governed by the laws of the State of Oregon. The parties agree that exclusive jurisdiction for the resolution of any dispute between the parties shall be in the Circuit Court of the State of Oregon and that the exclusive venue for such proceedings shall be in Multnomah County, Oregon.

11.2 In the event suit, action or other proceeding, is instituted in connection with any controversy arising out of this Operating Agreement, or in the enforcement of any right hereunder, the prevailing party shall be entitled to its costs and reasonable attorney fees in such suit or action, trial, arbitration, interpleader, bankruptcy, hearing or any other judicial proceeding and on appeal taken therefrom.

11.3 The parties hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, counterclaim or other proceeding relating to this Operating Agreement or any other agreement, document or act relating in any way to this Operating Agreement, or any actions or omissions by any party in connection therewith.

12. Benefits of this Agreement. The provisions of this Operating Agreement are intended solely for the benefit of members and, except for provisions included expressly for the benefit of the Managers, shall create no rights or obligations enforceable by any third party, including creditors of the LLC, except as otherwise provided by applicable law.

13. Notice. Any notice required under this Operating Agreement shall be effective on the earliest to occur of (a) four (4) days after it is placed in the U.S. Mail, postage prepaid, with return receipt requested, addressed to the last known address of the party to whom it is address, or to such other address as the party may have provided to the LLC by notice; or (b) when received on a facsimile machine in operation at such address as evidenced by a confirmation of receipt, or (c) when actually received by the party or an officer of the party to whom it is directed or (d) one business day after it is sent, pre-paid, via a commercial overnight courier service that provides a return receipt.

14. Applicability of Securities Laws.

14.1 Each member has made an independent determination of the suitability of such member's involvement in the LLC. Each member has concluded that the LLC is an association in the nature of a partnership and that such member's interest does not constitute a security to which federal securities and state blue sky laws apply.

14.2 Each member has represented to the LLC and to each other member (a) that such member is an Accredited Investor as that term is defined under applicable state and

federal securities laws, in that such member is either an entity or an individual which either has a net worth, with his or her spouse, of in excess of One Million Dollars (\$1,000,000) or had an income in excess of \$200,000, excluding such member's spouse or \$300,000 jointly with such member's spouse in each of the two most recent years; and (b) that such member is acquiring an interest in the LLC as a principal for the purpose of investment and not with a view to resale or distribution.

14.3 Each member acknowledges and represents to the LLC and to each other member that such member is aware that membership interests in the LLC have not been registered as securities and are absolutely non-transferable unless all of the other members consent to such transfer by amending this Operating Agreement.

14.4 Each member acknowledges and represents to the LLC and to each other member that such member has had the opportunity to inquire into the details of the LLC's planned activities and that such member has obtained all information which such member feels is necessary to allow the member to evaluate the decision to become a member of the LLC.

#### 15. Related Transactions.

15.1 This Operating Agreement has been prepared by Josselson, Potter & Roberts as attorneys for the Aspen. The Original Members are aware that Josselson, Potter & Roberts does not represent the Original Members or any other entity or individual in connection with the drafting of this Operating Agreement and has been advised to seek independent counsel to advise it as to the effect of this Operating Agreement. The LLC has agreed to pay all of Aspen's costs incurred in connection with its decision to enter into this Operating Agreement, including but not limited to its attorney fees, its due diligence costs and its other out of pocket costs and expenses. The Original Members and the LLC agree that in any dispute relating to Aspen's interest as a member of the LLC or as a creditor, Josselson, Potter & Roberts may represent Aspen and all conflicts between Josselson, Potter & Roberts and the LLC are expressly waived.

15.2 Aspen has agreed to loan \$2,360,160 to the LLC (the "Aspen Loan"). The proceeds of the Aspen Loan will be used to make a \$2,000,000 payment on the purchase price for the Property, with the balance of the loan proceeds (\$360,000) set aside as an interest reserve from which interest payments are to be made every month. The outstanding balance of the Aspen Loan shall bear interest at a rate equal to the greater of (a) the prime rate of interest as announced from time to time by Bank of America N.A. plus 6.66% or (b) 14.4%. The entire outstanding balance of the Aspen Loan is due and payable on the earlier of (i) the close of the sale of the Pacific City portion of the Property or (ii) July 1, 2007. The Aspen Loan shall be evidenced by a promissory note in the form of Exhibit "B." The members agree that the occurrence of a material event of default of this Loan Agreement, or any other agreement between Aspen or any affiliate of Aspen and Mr. Sides or between Aspen and the LLC, will constitute a material event of default of this Operating Agreement. Upon the occurrence of a material event of default of this Operating Agreement, Aspen may initiate the Buy-Sell Auction provisions of Section 17 of this Operating Agreement.

15.3 Mr. Sides, by his execution of this Operating Agreement, agrees to guaranty the full payment of the Aspen Loan, which guaranty is secured by an assignment of all of his membership interest in the LLC. An affiliate of Aspen, Aspen Chemawa LLC has made a separate loan to Mr. Sides a portion of the proceeds of which were used to make the initial \$250,000 payment of the purchase price for the Property. Mr. Sides hereby assigns to Aspen, as additional security for the Aspen Loan, all of the interests assigned to Aspen Chemawa LLC as security for the separate loan, which assignment is subject to and inferior to the assignment to Aspen Chemawa LLC.

15.4 Aspen shall have the right to structure the Aspen Loan as a wrap loan, with the LLC obtaining a loan secured by the Property from a third party lender. The LLC shall cooperate with Aspen in structuring the Aspen Loan in this manner if so requested by Aspen.

16. Counterparts/Facsimile Signatures. This Operating Agreement and all other agreements or documents relating to this Operating Agreement may be executed in one or more counterparts which together shall constitute a single agreement. Any such agreement or document shall be binding upon all of the parties even though they may not have executed the same counterpart. A facsimile showing the signature of a party shall be evidence of the execution of the agreement or document and may be used as an original for all purposes.

17. Buy-Sell Auction Provisions.

17.1 Upon the occurrence of any event which, pursuant to this Operating Agreement, gives a member the right to initiate a Buy-Sell Auction, such member may initiate a Buy-Sell Auction by providing written notice to the other party that it wishes to commence the Buy-Sell Auction. The notice shall set forth the time and date of the Buy-Sell Auction, which date shall be not less than ten (10) nor more than twenty (20) days after the date of the notice. The Buy-Sell Auction shall occur at the offices of Josselson, Potter & Roberts, 425 NW 10th, Suite 306, Portland, Oregon, unless the parties agree on an alternative location.

17.2 The Buy-Sell Auction shall be supervised by a neutral third party designated by the parties (the "Supervisor"), provided, however, that if the parties have not agree upon a Supervisor five (5) days before the date set forth the Buy-Sell Auction, the party initiating the Buy-Sell Auction shall request that a Supervisor be appointed by Arbitration Services of Portland or if Arbitration Services of Portland is unwilling or unable to appoint a Supervisor, by any other commercial arbitration or mediation service having a presence in the Portland metropolitan area. All costs associated with the Buy-Sell Auction, including the fees charges by the Supervisor shall be shared equally by the members.

17.3 At the Buy-Sell Auction, each party shall state out loud its bid, with the party initiating the Buy-Sell Auction making the initial bid. The bid shall represent the purchase price for 100% of the assets of the LLC without regard to liabilities of the LLC. The purchase price for the ownership interest owned by either party (the "Purchase Price") shall be the amount that

party would have received had all of the assets of the LLC been sold for the bid amount and all of the liabilities of the LLC had been paid and reasonable reserves for unliquidated liabilities of the LLC had been set aside. After a bid is made, the other party shall have ten (10) minutes to make a counter-bid. Each counter-bid must exceed the preceding bid by not less than one percent (1%) of the previous amount bid. The Buy-Sell Auction shall continue until there is no counter-bid made. The party making the final bid shall be the Auction Buyer. The placement of a final bid shall constitute a binding agreement whereby the Auction Buyer agrees to purchase the entire membership interest of the other party (the "Auction Seller") and the Auction Seller agrees to sell its entire membership interest to the Auction Buyer for an amount equal to the final bid (the "Purchase Price").

17.4 Within five (5) business days after the completion of the Buy-Sell Auction, the Auction Buyer shall deposit an amount equal to ten percent (10%) of the Purchase Price with First American Title Insurance Company ("Escrow Agent"). If the Auction Buyer fails to make its deposit within the five (5) day period, the Auction Buyer's bid shall be deemed withdrawn and the Auction Seller shall have the right, but not the obligation, to purchase the entire interest of the Auction Buyer for an amount equal to the last bid made by the Auction Seller at the Buy-Sell Auction. The purchase and sale of the interest to be transferred shall close through Escrow Agent within thirty (30) days after completion of the Buy-Sell Auction. At closing, the Auction Buyer shall pay the entire Purchase Price, and the Auction Seller shall assign its entire interest in the LLC to the Auction Buyer free and clear of all liens, claims or encumbrances of any kind.

17.5 In the event the Auction Buyer fails to tender full payment of the Purchase Price and to satisfy the condition to closing set forth in Section 14.4 of this Operating Agreement by the date set for closing and close the purchase, the earnest money deposited by the Auction Buyer shall be paid to the Auction Seller as liquidated damages and the Auction Seller shall have the right, but not the obligation, to purchase the entire interest of the Auction Buyer for an amount equal to the last bid made by the Auction Seller at the Buy-Sell Auction. If the original Auction Seller elects to purchase the interest of the original Auction Buyer, it shall provide written notice of the election within ten (10) business days after the failure to close. If such notice is given, the purchase and sale shall proceed in the manner set forth above as if the Auction Seller had been the successful bidder at the Buy-Sell Auction. The original Auction Buyer shall not receive any credit for the earnest money paid to the original Auction Seller. If the original Auction Seller does not elect to purchase the original Auction Buyer's interest, the parties shall return to their original status as if the Buy-Sell Auction had not been initiated. Thereafter, each party shall have the right to begin the process anew.

18. Entire Agreement. This Operating Agreement, together with the separate Loan Agreement attached as Exhibit "D" to this Operating Agreement and the additional agreements referred to in the Loan Agreement, constitutes the entire agreement between the parties. There are no other agreements, written or oral between the parties except as expressly set forth herein. Any amendment or modification of this Operating Agreement or of any other agreement relating to the LLC, or any waiver of any of the provisions thereof shall be valid only when reduced to writing and executed by all of the parties affected thereby.

This Operating Agreement adopted as of June 1, 2006.



Charles A. Sides

ASPEN MOOK LLC

By \_\_\_\_\_

Stephen P. Lippold

Joshua A. Wells



FIRST AMENDMENT TO THE  
RESTATED OPERATING AGREEMENT  
OF ASPEN PACIFIC CITY LLC

Aspen made a loan to the LLC (the "Aspen Loan") pursuant to the terms set forth in Section 15 of the Restated Operating Agreement of LLC. The LLC signed a Promissory Note on July 31, 2006 evidencing the Aspen Loan. Pursuant to Section 15.3 of the Restated Operating Agreement of the LLC, Mr. Sides agreed to guaranty the full payment of the Aspen Loan and provided security for this obligation. The LLC needs additional funds to complete the purchase of the property described in the Agreement with Arnold Meyerstein (the "Agreement"). Aspen has agreed to provide these additional funds on the following basis:

1. Loan Amount. The amount of the Aspen Loan shall be increased by \$1,515,400 from \$2,360,000 to \$3,875,400. The Promissory Note from the LLC to Aspen is hereby amended to reflect this change. The proceeds of this increase shall be disbursed through Lawyers Title Company to pay for the property described in the Agreement.

2. Guaranty. By his signature to this First Amendment, Mr. Sides reaffirms his Guaranty and agrees that the amount guaranteed is increased to reflect the amended obligation of the LLC to Aspen.

3. Security. As security for the Aspen Loan, the LLC shall execute and deliver for recording first trust deeds on each parcel of the property acquired pursuant to the Agreement. Irving Potter is expressly authorized to execute these trust deeds on behalf of the LLC and to cause the trust deeds to be recorded in the appropriate counties.

4. Allocation of Profits and Losses. Section 3 of the Restated Operating Agreement of the LLC is hereby amended to increase the special allocation of profits to Aspen from One Hundred Eighty Thousand Dollars (\$180,000) to Two Hundred Eight-Nine Thousand Eighty Dollars (\$289,080) and increase of \$109,080.

5. Due Date. The Aspen Loan remains due and payable on or before July 1, 2007. Failure of the LLC to pay the entire balance of the principal and interest on the Aspen Loan by the due date would constitute the occurrence of an event of default of the Aspen Loan as referenced in Section 6.4 of the Restated Operating Agreement of the LLC.

6. Representations and Warranties. The LLC and its members represent and warrant to Aspen:

6.1 Execution of this First Amendment and of all other documents and agreements referred to herein have been duly approved, to the extent required, by the LLC, its members and by all other parties whose approval is necessary to make the document or agreement enforceable according to its terms.

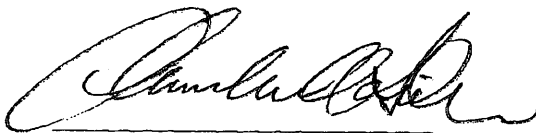
6.2 There are no approvals or consents of any kind which have not been obtained necessary to make this First Amendment and all agreements and documents referred to herein fully effective and enforceable against the LLC and against the assets that have been assigned to Aspen as security for the Aspen Loan.

6.3 The LLC and its members acknowledge and represent that, as of the date of this First Amendment, Aspen, and all parties related to Aspen, are in full and complete compliance with the terms of all agreements between Aspen and any parties related to Aspen and the LLC and its members and that there exist no claims or demands of any kind by the LLC or its members, against Aspen or any party related to Aspen in any manner. The LLC expressly waives any such claim, known or unknown, to the maximum extent permitted by law. The LLC and its members acknowledge their understanding that Aspen is relying upon these representations in agreeing to increase the amount of the Aspen Loan.

7. Entire Agreement. The Restated Operating Agreement of the LLC, together with this First Amendment, and the Promissory Note signed by the LLC, and the other documents and instruments referred to herein constitutes the entire agreement between the parties. There are no other agreements, written or oral between the parties except as expressly set forth herein. Any further amendment or modification of the Restated Operating Agreement of the LLC or of any other agreement relating to the LLC or the Aspen Loan, or any waiver of any of the provisions thereof shall be valid only when reduced to writing and executed by all of the parties affected thereby.

8. Counterparts and Facsimile Signatures. This First Amendment and all other agreements among or between the parties may be signed in counterparts, which together shall constitute a single agreement. A facsimile bearing the signature of any party shall constitute proof of the party's signature for all purposes.

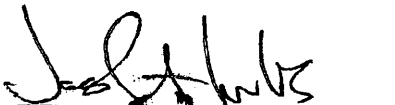
EXECUTED as of this 28<sup>h</sup> day of September, 2006.



Charles A. Sides



Stephen P. Lippold



Joshua A. Wells

ASPEN MOOK LLC

By \_\_\_\_\_

For its manager

SECOND AMENDMENT TO THE  
RESTATED OPERATING AGREEMENT  
OF ASPEN PACIFIC CITY LLC

Aspen Mook LLC ("Aspen") made a loan to Aspen Pacific City LLC (the "LLC" and the "Aspen Loan") pursuant to the terms set forth in Section 15 of the Restated Operating Agreement of the LLC and the LLC signed a Promissory Note on July 31, 2006 evidencing the Aspen Loan. Aspen made an additional loan pursuant to the First Amendment to the Restated Operating Agreement of the LLC, which incorporated an amendment to the Promissory Note, on September 26, 2006. Pursuant to Section 15.3 of the Restated Operating Agreement of the LLC, Mr. Sides agreed to guaranty the full payment of the Aspen Loan and provided security for this obligation. The LLC needs additional funds to pay expenses associated with the properties that it owns. Aspen has agreed to provide these additional funds on the following basis:

1. Loan Amount. The amount of the Aspen Loan shall be increased by One Hundred and Eight Thousand Dollars (\$108,000), from \$3,875,400 to \$3,983,400. The Promissory Note from the LLC to Aspen is hereby amended to reflect this increase. The proceeds of this increase shall be disbursed by the co-Managers, or either of them, to pay the expenses incurred.

2. Guaranty. By his signature to this Second Amendment, Mr. Sides reaffirms his Guaranty and agrees that the amount guaranteed is increased to reflect the amended obligation of the LLC to Aspen.

3. Representations and Warranties. The LLC and its members represent and warrant to Aspen:

3.1 Execution of this Second Amendment and of all other documents and agreements referred to herein have been duly approved, to the extent required, by the LLC, its members and by all other parties whose approval is necessary to make the document or agreement enforceable according to its terms.

3.2 There are no approvals or consents of any kind which have not been obtained that are necessary to make this Second Amendment and all agreements and documents referred to herein fully effective and enforceable against the LLC and against the assets that have been assigned to Aspen as security for the Aspen Loan.

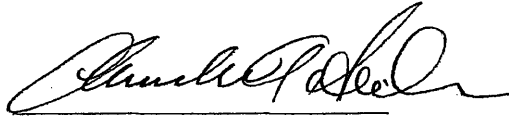
3.3 The LLC and its members acknowledge and represent that, as of the date of this Second Amendment, Aspen, and all parties related to Aspen, are in full and complete compliance with the terms of all agreements between Aspen and any parties related to Aspen and the LLC and its members and that there exist no claims or demands of any kind by the LLC or its members against Aspen or any party related to Aspen in any manner. The LLC expressly waives any such claim, known or unknown, to the maximum extent permitted by law. The LLC and its members acknowledge their understanding that Aspen is relying upon these representations in

agreeing to increase the amount of the Aspen Loan.

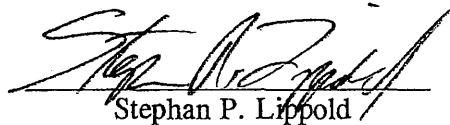
4. Entire Agreement. The Restated Operating Agreement of the LLC, together with the First Amendment, this Second Amendment, and the Promissory Note signed by the LLC, as amended, and the other documents and instruments referred to herein constitutes the entire agreement between the parties. There are no other agreements, written or oral, between the parties except as expressly set forth herein. Any further amendment or modification of the Restated Operating Agreement of the LLC or of any other agreement relating to the LLC or the Aspen Loan, or any waiver of any of the provisions thereof shall be valid only when reduced to writing and executed by all of the parties affected thereby.

5. Counterparts and Facsimile Signatures. This Second Amendment and all other agreements among or between the parties may be signed in counterparts, which together shall constitute a single agreement. A facsimile bearing the signature of any party shall constitute proof of the party's signature for all purposes.


EXECUTED as of this 24<sup>th</sup> day of April, 2007.



Charles A. Sides



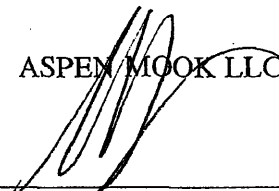
Stephan P. Lippold



Joshua A. Wells

ASPEN MOOK LLC

By

  
For its manager,  
Aspen Real Estate Private Capital  
Fund II Manager LLC

THIRD AMENDMENT TO THE  
RESTATED OPERATING AGREEMENT OF  
ASPEN PACIFIC CITY LLC

Aspen Pacific City LLC (the "LLC") adopted a Restated Operating Agreement which was effective as of June 1, 2006. The Restated Operating Agreement was amended by a First Amendment to Restated Operating Agreement of Aspen Pacific City LLC which was dated as of September 28, 2006 and a Second Amendment to Restated Operating Agreement dated as of April 24, 2007. The Restated Operating Agreement as amended by the First Amendment and Second Amendment to Operating Agreement is referred to herein as the "Current Operating Agreement." Defined terms not defined herein are used as defined in the Current Operating Agreement. By adoption of this Third Amendment to the Restated Operating Agreement of Aspen Pacific City LLC (the "Third Amendment") the members of the LLC wish to admit a new member to the LLC and to further amend the Operating Agreement of the LLC as follows:

1. Admission of New Member Cascade Construction Management, LLC ("Cascade") shall be admitted as a member of the LLC effective upon execution of the Third Amendment by each of the members, including Cascade. Following the admission of Cascade, the members and their ownership percentages in the LLC shall be as follows:

Cascade Construction Management, LLC	50.0%
Aspen Mook LLC	9.0%
Charles A. Sides	32.8%
Stephen P. Lippold	4.1%
Joshua A. Wells	4.1%
Total	100%

2. Capital Contribution. Within five (5) days after execution by all of the members of the LLC this Third Amendment, Cascade shall contribute \$2,000,700 in cash to the LLC.

3. Use of Contributed Funds. The funds contributed to the LLC by Cascade shall be used to reduce the outstanding balance of the loan from Aspen Mook LLC ("Aspen") to the LLC. As a condition of the pay down of the Aspen Loan, Aspen must agree to release the 53 acre parcel described on Exhibit "A" to this Agreement from the lien of its trust deed.

4. Allocation of Profits and Losses. Except as set forth in Section 5 of this Third Amendment, profits and losses of the LLC shall be allocated one half to Cascade and one half to the remaining members of the LLC other than Cascade. The one half of profits allocated to the members other than Cascade shall be allocated among such members pursuant to the provisions of the Current Operating Agreement, including those provisions of the Current Operating Agreement relating to special allocations of profits. Cascade's allocation under the terms of this Third Amendment shall not be subject to or

reduced by the special allocation of profits provided for under the Current Operating Agreement.

5. Responsibility for the Aspen Loan.

5.1 All costs and expenses relating to the Aspen Loan shall be allocated solely to the members of the LLC other than Cascade. While the obligation to repay the Aspen Loan remains an obligation of the LLC, the members agree that principal and interest payments on the Aspen Loan shall be payable first from distributions otherwise payable to the members other than Cascade and shall be charged against the capital account of the members other than Cascade.

5.2 All profits from the sale of assets of the LLC owned as of the date of this Third Amendment that are located outside of Tillamook County, Oregon shall be allocated solely to the members of the LLC other than Cascade. All proceeds from the sale of such assets shall be used solely to repay the Aspen Loan and shall not be considered excess cash of the LLC.

6. Distributions Section 4 of the Restated Operating Agreement is amended to provide:

6.1 The amount of excess cash shall not be reduced by amounts necessary to pay the Aspen Loan.

6.2 One half of the excess cash shall be distributed to Cascade and the other one half shall be used to pay the principal and interest on the Aspen Loan. After the Aspen Loan has been paid in full, the one half of excess cash not distributed to Cascade shall be distributed to the members other than Cascade pursuant to the provisions of the Current Operating Agreement. Except as set forth in Section 5 of this Third Amendment, the Aspen Loan shall be paid only from excess cash that would otherwise be distributed to the members other than Cascade.

7. Management Section 6 of the Current Operating Agreement is deleted and replaced in its entirety with the following new Section 6.

"6. Management.

6.1 Subject to the specific provisions of Section 6 of this Operating Agreement, the LLC shall be managed by a Manager or Managers designated by the members.

6.2 Subject to the provisions of Section 6.6 of this Operating Agreement, the LLC shall be managed by two co-Managers, one of whom shall be appointed by Cascade (the "Cascade Manager") and one of whom shall be appointed by the Original Members (the "Original Member's Manager"). All actions and all decisions shall require the consent of both co-Managers and all

documents signed on behalf of the LLC must be signed by a representative of each co-Manager. Except as set forth in Section 6.5 of this Operating Agreement, either co-Manager may be changed at any time by written notice to the LLC from the parties or entity appointing such co-Manager. Until other Co-Managers are designated, Tim Keir shall serve as the Cascade Manager and Mr. Sides shall serve as the Original Member's Manager. The co-Managers may make reasonable delegations of ministerial functions to other individuals or entities, which delegations must be described in a writing signed by both co-Managers.

6.3 The Cascade Manager shall be primarily responsible for maintaining the books and records of the LLC, preparing all tax returns, preparing development budgets, negotiating construction and development contracts, dealing with adjacent landowners and government authorities, provided, however, that all final agreements must be approved by both co-Managers as set forth in Section 6.2 of this Operating Agreement.

6.4 If there is a material disagreement among the co-Managers relating to a decision which either member reasonably believes involves a decision critical to the completion of the planned development of the Property, the co-Managers shall exercise their best efforts to resolve the dispute through direct discussions and, if requested by either co-Manager, participation in mediation through the auspices of a qualified mediator. If either member reasonably believes such discussions are no longer productive and that mediation has failed, such member may initiate a Buy-Sell Auction pursuant to the provisions of Section 17 of this Operating Agreement.

6.5 Aspen shall have the right to take over as the Original Member's Manager if any of the events set forth below occur. Aspen may exercise this right by written notice to Mr. Sides, with a copy to the Cascade Manager, setting forth the basis for its exercise of such right. Immediately upon delivery of such notice, without the necessity of any further action or judicial proceeding, the Original Member's Manager shall cease to be a co-Manager of the LLC and Aspen shall become a co-Manager along with the Cascade co-Manager. Aspen will have the right to become Original Member's Manager upon the occurrence of an event of default of the Aspen Loan. The Original Members shall sign and deliver to Aspen's counsel, Josselson & Potter, a certificate, in the form attached, which may be delivered to Aspen if Aspen exercises its right to become the Original Members' Manager pursuant to this Section 6.5. If Aspen has taken over as the Original Member's Manager pursuant to Section 6.5 of this Operating Agreement, Aspen shall be paid a management fee of \$1,800 per month, which shall be treated as an expense of the LLC chargeable only to the Original Members and payable only out of distributions that would otherwise be due to the Original Members.

6.6 Each co-Manager shall be reimbursed by the LLC for all reasonable expenses incurred by them on behalf of the LLC. In this context, the



co-Managers may engage such employees or agents as are necessary for the management of the LLC either directly as employees or agents of the LLC or as employees or agents of the Manager. No Manager shall receive any other compensation for its services as Manager.

6.7 The members acknowledge that regardless of the financial condition of the LLC or the status of its business affairs, the filing of a petition in bankruptcy could have a materially adverse effect on the value of its assets and that such a filing is a major action which should only be undertaken in the most limited circumstances. The members therefore agree that they will not cause the LLC to file a voluntary petition in bankruptcy or assist any other party in such a filing without the express written consent of Aspen, Cascade and Mr. Sides, which consent may be withheld in the sole discretion of the party, provided, however, that if Aspen has exercised its right to take over as the Original Member's Manager pursuant to Section 6.5 of this Operating Agreement, Mr. Side's consent shall not be required.

6.8 The members are aware that there is an actual conflict between Aspen's role as member and as a possible co-Manager of the LLC and its position as a creditor of the LLC. The members expressly waive any claim against Aspen resulting from any claimed, actual or potential conflict between its position as a creditor of the LLC and its position as a co-manager and member, including but not limited to any actions initiated by Aspen to collect on the Aspen Loan and any action by Aspen to prevent the filing of a petition in bankruptcy. This waiver by the members was a material inducement to Aspen to become a member of the LLC and to make the Aspen Loan.

6.9 The LLC shall engage a third party broker or brokers, as soon as possible, to begin marketing the LLC's Pacific City property."

8. Capital Calls Section 2.10 of the Current Operating Agreement is deleted and replaced in its entirety with the following new Section 2.10:

"2.10 The co-Managers may call for additional capital contributions from the members. Any capital call must be approved by both co-Managers, provided, however, that approval of a capital call proposed by one of the co-Managers shall not be unreasonably withheld, delayed or conditioned if the capital call is made in good faith and is necessary to either (a) meet an obligation of the LLC or (b) complete development of the Property in a manner reasonably consistent with a development budget approved, in writing by all of the members of the LLC. Cascade shall contribute one half of the capital called for and the Original Members shall contribute the other one half of the capital called for, allocated among the Original Members and Aspen based on their interest in the profits and losses of the LLC."

#### 9 Related Transactions

9.1 It is agreed that Cascade, or an affiliate of Cascade, shall have the option to perform all or part of any construction work in which the LLC engages provided the LLC has obtained a competitive bid for such work for at least one reasonably qualified contractor and Cascade's has agreed to perform such work under the terms of a construction agreement with guaranteed not to exceed cost to the LLC equal to or less than the lowest reasonably qualified competitive bid

9.2 If the LLC engages a contractor other than Cascade or an affiliate of Cascade to perform construction work for the LLC and Cascade, an affiliate of Cascade or the Cascade co-manager is expected to supervise such work, Cascade shall be paid a management fee equal to two percent (2%) of the total cost of such work. This fee shall be an expense of the LLC.

10 New Financing. The co-Managers shall exercise their reasonable best efforts to obtain competitive financing for the LLC, the proceeds of which shall be used first to pay off the Aspen Loan and then to pay for business activities of the LLC. If required by the lender, the Original Members shall guaranty any such new financing. Neither Cascade nor Aspen shall have any obligation to guaranty any new LLC financing.

11. Buy-Sell Auction. Section 17 of the Current Operating Agreement is amended to provide:

"In the event the Buy-Sell Auction provisions of this Section 17 of the Current Operating Agreement are invoked by Cascade, Aspen or any of the Original Members, for purposes of such Buy-Sell Auction, Aspen and the Original Members shall be treated as a single party and Cascade shall be treated as a single party. The end result of the Buy-Sell Auction would be the purchase by Cascade of all other interests in the LLC (i.e., the interests of Aspen, Sides, Wells, and Lippold) or for Aspen and the Original Members the purchase by Aspen and the Original Members of the interest of Cascade in the LLC."

12 Representations and Warranties.

12.1 Aspen and the Original Members, by their signatures below, represent and warrant to Cascade that: (a) as of the date hereof, the Aspen Loan is not in default, no default is or has been threatened, nor does there exist any basis for asserting a default; (b) there does not currently exist a default or any basis for asserting or claiming a default in the Aspen Loan or any provision thereof; (c) Cascade has been provided with the following documents: (i) Secured Line of Credit Promissory Note dated as of July 31, 2006; (ii) the Trust Deed from the LLC for the benefit of Aspen Mook LLC and (iii) the Current Operating Agreement, which are all of the documents that comprise the Aspen Loan. These documents have not been amended, altered or modified from the form provided to Cascade and no amendment or modification has been agreed upon.


Cascade has been provided with financial statements dated May 15, 2007, and initialed by each of the Original Members, which the Original Members warranted are true and correct.

12.2 The parties hereto understand, acknowledge and agree that Cascade is executing this Third Amendment and making the Capital Contribution called for in Section 2 of this Third Amendment, based upon the foregoing representations and warranties, which are a material inducement for Cascade and without which Cascade would not have entered into this agreement.


13. Entire Agreement The Restated Operating Agreement of the LLC, together with the First Amendment, the Second Amendment and this Third Amendment, and the other documents and instruments referred to herein constitutes the entire agreement between the parties. There are no other agreements, written or oral between the parties except as expressly set forth herein. Any further amendment or modification of the Restated Operating Agreement of the LLC or of any other agreement relating to the LLC or the Aspen Loan, or any waiver of any of the provisions thereof shall be valid only when reduced to writing and executed by all of the parties affected thereby.

14. Counterparts and Facsimile Signatures This Third Amendment and all other agreements among or between the parties may be signed in counterparts, which together shall constitute a single agreement. A facsimile bearing the signature of any party shall constitute proof of the party's signature for all purposes.

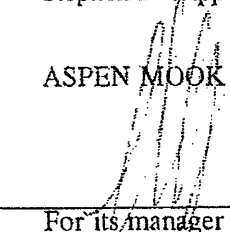
EXECUTED as of this \_\_\_\_ day of May, 2007.

  
Charles A. Sides

  
Stephen P. Lippold

  
Joshua A. Wells

ASPEN MOOK LLC

By   
For its manager

CASCADE CONSTRUCTION MANAGEMENT, LLC

By 

CERTIFICATE OF AUTHORITY

ASPEN PACIFIC CITY LLC

The undersigned, who constitute all of the Original Members of Aspen Pacific City LLC (the "LLC") hereby certify that, upon delivery of a copy of this Certificate of Authority to the LLC, the co-Manager of the LLC designated by the Original Members (as defined in the Restated Operating Agreement of the LLC, as amended) shall be Aspen Mook LLC ("Aspen") As the designated co-Manager of the LLC, Aspen has full and exclusive authority to act on behalf of the Original Members in all respects permitted by the Restated Operating Agreement of the LLC, as amended.

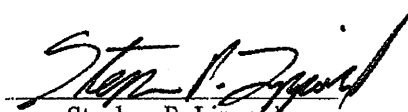
In addition, the Original Members hereby grant to Aspen their power of attorney to act on their behalf in all matters for which member approval is required under the terms of the Restated Operating Agreement of the LLC, as amended. The Original Members acknowledge that this power of attorney is coupled with an interest and is irrevocable without the express written consent of Aspen.

The Original Members expressly agree that they do not have authority to file a voluntary petition in bankruptcy on behalf of the LLC or do any act which assists any third party in furthering a petition for involuntary bankruptcy and that Aspen has no obligation to agree to or assist in such a filing. The Original Members expressly acknowledge that they do not have any authority to engage any attorney or other professionals to participate in such filing and acknowledges no party may act for the LLC in such regard without the express written consent of Aspen and the other co-Manager of the LLC or to exercise any of the other powers or authorities of the co-Manager of the LLC designated by the Original Members.

The Original Members acknowledge and agree that the LLC and the other co-Manager may rely upon the validity and effectiveness of the authority of Aspen described herein in all respects in dealing with the LLC and the Original Members.



Charles A. Sides



Stephen P. Lippold



Joshua A. Wells

FOURTH AMENDMENT TO THE  
RESTATED OPERATING AGREEMENT OF  
ASPEN PACIFIC CITY LLC

Aspen Pacific City LLC (the "LLC") adopted a Restated Operating Agreement which was effective as of June 1, 2006. The Restated Operating Agreement was amended by a First Amendment to Restated Operating Agreement of Aspen Pacific City LLC which was dated as of September 28, 2006, a Second Amendment to Restated Operating Agreement dated as of April 24, 2007 and a Third Amendment to Restated Operating Agreement dated as of May \_\_\_, 2007. The Restated Operating Agreement as amended by the First, Second and Third Amendments to the Operating Agreement, is referred to herein as the "Current Operating Agreement." Defined terms not defined herein are used as defined in the Current Operating Agreement. By adoption of this Fourth Amendment to the Restated Operating Agreement of Aspen Pacific City LLC (the "Fourth Amendment") the members of the LLC amend the Current Operating Agreement of the LLC as follows:

1. Loan. The LLC is hereby authorized to borrow up to \$500,000 from KERR CONTRACTORS, INC.. In the event the LLC elects to utilize such credit, the outstanding principal amount of any loan from KERR CONTRACTORS, INC. (hereinafter the "KERR Loan") will bear interest at the rate of twelve percent (12%) per annum shall provide that it may be prepaid in whole or in part at any time, and shall be due and payable upon the first date the LLC has excess funds sufficient to satisfy the KERR Loan in its entirety and to make any cash distribution to the Members. If at any time there is an amount outstanding on the KERR Loan, it is hereby acknowledged and agreed that the LLC shall make no cash distributions of any kind to its Members unless and until any such amount outstanding on the KERR Loan has been repaid in its entirety.

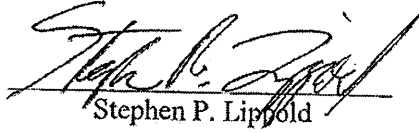
2. Entire Agreement. The Current Operating Agreement of the LLC, together with this Fourth Amendment to the Current Operating Agreement, and the additional documents and/or instruments referred to herein or contemplated by this Fourth Amendment constitute the entire agreement between the parties. There are no other agreements, written or oral between the parties except as expressly set forth herein. Any further amendment or modification of the Current Operating Agreement, as Amended by the Fourth Amendment of the LLC or of any other agreement relating to the LLC or the KERR Loan, or any waiver of any of the provisions thereof shall be valid only when reduced to writing and executed by all of the Members of the LLC.

3. Counterparts and Facsimile Signatures. This Fourth Amendment and all other agreements among or between the parties may be signed in counterparts, which together shall constitute a single agreement. A facsimile bearing the signature of any party shall constitute proof of the party's signature for all purposes.

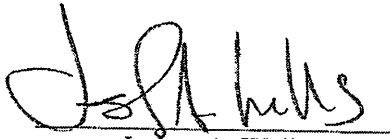
EXECUTED as of this 31st day of January, 2008.



Charles A. Sides



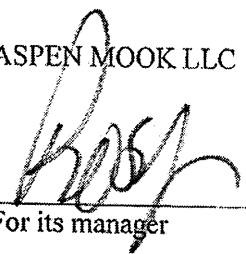
Stephen P. Lippold



Joshua A. Wells

ASPEN MOOK LLC

By


  
For its manager

Kerr Contractors

By \_\_\_\_\_

  
Charles A. Sides


  
Stephen P. Lippold

  
Joshua A. Wells

ASPEN MOOK LLC

By   
For its manager

Kerr Contractors

By   
Jim Kerr

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EXHIBIT 1  
PAGE 27 OF 27

## NOTICE OF CALL FOR ADDITIONAL CAPITAL CONTRIBUTIONS

**PLEASE TAKE NOTICE**, that at a special meeting of the members and managers of **Aspen Pacific City LLC**, an Oregon limited liability company ("LLC") held on January 10, 2012, the managers of the LLC duly consented to impose a call for additional capital contributions from all the members of the LLC ("Members"), pursuant to Section 2.10 of the Restated Operating Agreement of the LLC as amended ("Operating Agreement").

The total of the additional capital contributions required by the LLC from the Members is \$3,000,000.00 ("3,000,000.00 Capital Call"). Cascade Construction Management, LLC ("Cascade") is required to pay one-half of the \$3,000,000.00 Capital Call. The Original Members and Aspen Mook LLC ("Aspen") are required to pay the other one-half of the \$3,000,000.00 Capital Call, allocated amongst the Original Members and Aspen in proportion to their interests in the profits and losses of the LLC. The \$3,000,000.00 Capital Call will be used to pay part of the LLC's outstanding loan balances owed to Columbia State Bank, as required by the Bank, to Kerr Contractors, Inc. and for 2012 LLC operating expenses.

The \$3,000,000.00 Capital Call is due and payable in two equal installments. The first installment payment is due by February 10, 2012. The second installment payment is due by July 1, 2012. **Time is of the essence.**

Each Member is obligated to pay the Member's respective share of the \$3,000,000.00 Capital Call as follows:

Name of Member	1st Installment due Feb 10, 2012	2d Installment due July 1, 2012
Cascade Construction Management, LLC	\$750,000.00	\$750,000.00
Charles A. Sides	\$492,000.00	\$492,000.00
Joshua A. Wells	\$ 61,500.00	\$ 61,500.00
Stephen P. Lippold	\$ 61,500.00	\$ 61,500.00
Aspen Mook, LLC	\$135,000.00	\$135,000.00

Payments made by check must be delivered to Tim Kerr, Mgr. of LLC. Payments made by Federal Reserve System wire transfer must be delivered pursuant to the instructions attached to this notice as **Exhibit "1."**

Capitalized terms appearing in this notice which are not defined in this notice, have the meanings given to them in the Operating Agreement.

[Signature on the following page]



DATED: January 27, 2012

CASCADE CONSTRUCTION MANAGEMENT, LLC  
an Oregon limited liability company, Mgr. of Aspen Pacific City, LLC

By: Tim Kerr  
Name: Tim Kerr  
Title: Manager \_\_\_\_\_

NOTICE OF CALL FOR ADDITIONAL CAPITAL CONTRIBUTIONS - 2

EXHIBIT 2  
PAGE 2 OF 2

## NOTICE OF DEMANDS AND SPECIAL MEETING OF MEMBERS AND MANAGERS

**PLEASE TAKE NOTICE**, in accordance with ORS 63.801(2) captioned "Derivative Proceedings" Cascade Construction Management, LLC, ("Cascade"), which is a member and manager of Aspen Pacific City LLC, an Oregon limited liability company ("LLC"), hereby makes the following demands on member-manager, Charles Sides and all other members of the LLC:

1. To authorize the LLC to proceed with a lawsuit for payment of capital contributions against those members that have failed to pay their capital contributions authorized by the LLC's managers as set forth in the January 27, 2012, Notice of Call for Capital Contributions, a copy of which is attached hereto as **Exhibit "1"**, coupled with an action seeking expulsion of those members who have willfully failed to pay the contributions that have made it reasonably impracticable to carry on the business of the LLC with those members;
2. To authorize the LLC to proceed with a lawsuit against member-manager, Charles Sides, seeking an accounting and all damages and relief owing to the LLC due to a trust deed given by Mr. Sides against LLC property in Jackson County, Oregon, without the required authorization from Cascade as co-manager of the LLC, and Mr. Sides' use of the \$350,000 loan proceeds which are purportedly secured by the trust deed, coupled with an action seeking removal of Mr. Sides as manager and expulsion as a member due to his wrongful conduct affecting the business and affairs of the LLC;
3. To authorize the LLC to retain and pay attorney(s) to advise and represent the LLC and to proceed with the lawsuits described in items 1 and 2 and in all proceedings necessary to carry out the orders and judgments of the courts.

**PLEASE TAKE NOTICE**, that a special meeting of the members and managers of has been called by Cascade.

The meeting will be held beginning at 10:00 AM. on April 12<sup>th</sup>, 2012 at the office of Kerr Contractors, 395 Shenandoah Ln. Woodburn, Oregon, 97071

**The purpose of the meeting is to discuss, consider, determine and decide:**

- A. To authorize the LLC to proceed with a lawsuit for payment of capital contributions against those members that have failed to pay their capital contributions authorized by the LLC's managers as set forth in the January 27, 2012, Notice of Call For Capital Contributions, a copy of which is attached hereto as Exhibit "1", coupled with an action seeking expulsion of those members who have willfully failed to pay the contributions that have made it reasonably impracticable to carry on the business of the LLC with those members;
- B. To authorize the LLC to proceed with a lawsuit against member-manager, Charles Sides, for an accounting and for all damages and relief owing to the LLC due to a trust deed given by Mr. Sides against LLC property in Jackson County, Oregon without the required authorization from Cascade as co-manager of the LLC, and Mr. Sides use of the \$350,000 loan proceeds which are purportedly secured by the trust

NOTICE OF SPECIAL MEETING OF MEMBERS AND MANAGERS AND  
PROPOSED CAPITAL CALL - 1

**EXHIBIT** 3  
**PAGE** 1 **OF** 2

deed, coupled with an action seeking removal of Mr. Sides as manager and expulsion as a member due to his wrongful conduct affecting the business and affairs of the LLC;

C. To authorize the LLC to retain and pay attorney(s) to advise and represent the LLC and to proceed with the lawsuits described in items A and B and in all proceedings necessary to carry out the orders and judgments of the courts;

D. To authorize the LLC, or its attorneys, to notify the Beneficiary of the Trust Deed, referenced in item B, that the Trust Deed and any obligation it secured, were not authorized by the LLC and are not enforceable against the LLC or its property; and to authorize the LLC to retain and pay attorney(s) to advise and represent the LLC in any action or proceeding to foreclose the Trust Deed, restrain any trustee's sale pursuant to the Trust Deed or to set aside the Trust Deed.

E. To consider an additional capital call in 2012 of the managers in the approximate amount of \$250,000.00 to meet the need for additional capital necessary to service/renew the LLC's loan with Columbia State Bank ("Bank").

Cascade is giving notice of this special meeting and items A through E above, to give the members and Mr. Sides a full and fair opportunity to express their views and cast their votes regarding these important issues. However, nothing in this notice or the special meeting will waive Cascade's rights under applicable law to unilaterally take the action or action equivalent to the action described in items A through D, without the consent or affirmative vote of Mr. Sides or the other members. Because of the importance of the meeting, Cascade will be recording the meeting with a video camcorder. Any other member may record the meeting as well.

Any member may attend the meeting by dialing into the following conference call number: (to be provided via email in the next 5 days) . Any member may attend the meeting in person or by proxy. Meeting will be at Kerr Contractors office at 395 Shenandoah Ln. Woodburn Oregon, 97071.

DATED: April 2nd, 2012.

CASCADE CONSTRUCTION MANAGEMENT, LLC  
an Oregon limited liability company

By: Tim Kerr  
Title: Member

Jackson County Clerk's Office 2010-014456

R-TD

Cnt=1 ALONZOKM

05/07/2010 01:17:09 PM

\$15.00 \$10.00 \$5.00 \$11.00 \$15.00 Total:\$56.00

ST

Cc



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rec

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No.

I, Christine Walker, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk's records.

Christine Walker - County Clerk

## TRUST DEED

Aspen Pacific City, LLC

P.O. Box 2087

Salem, Or 97308

Grantor's Name and Address

Jack Yarbrough

P.O. Box 20756

Keizer, Or 97307

Beneficiary's Name and Address

After recording, return to (Name, Address, Zip):

Jack Yarbrough

P.O. Box 20756

Keizer, Or 97307

SPACE RESERVED  
FOR  
RECORDER'S USE

Witness my hand and seal of County affixed.

NAME

TITLE

By \_\_\_\_\_, Deputy.

E21562089-TO (ALONZOKM)

THIS TRUST DEED, made on 27th Day of April 2010, between

Aspen Pacific City, LLC

John Storkel, Atty

Jack Yarbrough

as Beneficiary,

## WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee, in trust, with power of sale, the property in Jackson County, Oregon, described as:

1100 West Valley View Rd, Talent, Or

See Exhibit A for Legal Description

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00) Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final

payment of principal and interest, if not sooner paid, to be due and payable on April 26, 2011.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property, or all (or any part) of grantor's interest in it without first obtaining the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by grantor of an earnest money agreement\*\* does not constitute a sale, conveyance or assignment.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; and not to commit or permit any waste of the property.

2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require, and to pay for filing the same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and other hazards, as the beneficiary may from time to time require, in an amount not less than full ins value written by one or more companies acceptable to the beneficiary, with loss payable to the latter. All policies of insurance shall be delivered to the beneficiary as soon as issued. If the grantor shall fail for any reason to procure any such insurance and to deliver the policies to the beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the beneficiary may procure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges becomes past due or delinquent and promptly deliver receipts therefor to beneficiary. Should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof. For such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described. All such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and shall constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust, including the cost of title search, as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation, and trustee and attorney fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed or any suit or action related to this instrument, including but not limited to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney fees. The amount of attorney fees mentioned in this paragraph in all cases shall be fixed by the trial court, and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking which are in excess of the amount required to pay all reasonable costs, expenses and attorney fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby. Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon beneficiary's request.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 966.505 to 966.585.

\*WARNING: 12 USC 1701j-3 regulates and may prohibit exercise of this option.

\*\*The publisher suggests that such an agreement address the issue of obtaining beneficiary's consent in complete detail.

EXHIBIT

PAGE 1 OF 3

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9. At any time, and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; or (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may, at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such event, the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753 may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed, together with trustee and attorney fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of: (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney; (2) to the obligation secured by the trust deed; (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority; and (4) the surplus, if any, to the grantor, or to any successor in interest entitled to such surplus.

16. Beneficiary may, from time to time, appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The grantor covenants to and agrees with the beneficiary and the beneficiary's successors in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto, except as may be set forth in any addendum or exhibit attached hereto, and that the grantor will warrant and defend the same against all persons whomsoever.

**WARNING:** Unless grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, beneficiary may purchase insurance at grantor's expense to protect beneficiary's interest. This insurance may, but need not, also protect grantor's interest. If the collateral becomes damaged, the coverage purchased by beneficiary may not pay any claim made by or against grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by beneficiary, which cost may be added to grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date grantor's prior coverage lapsed or the date grantor failed to provide proof of coverage. The coverage beneficiary purchases may be considerably more expensive than insurance grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are (choose one):\*

(a) primarily for grantor's personal, family or household purposes (see Important Notice below).

(b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein.

In construing this trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument the day and year first written above.

**\*IMPORTANT NOTICE:** Delete, by lining out, whichever warranty (a) or (b) is inapplicable. If warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures. For this purpose use Stevens-Ness Form No. 1319, or the equivalent. If compliance with the Act is not required, disregard this notice.

*Charles Sides*  
Charles Sides

STATE OF OREGON, County of *Marion* ss.

This instrument was acknowledged before me on *May 3, 2010*

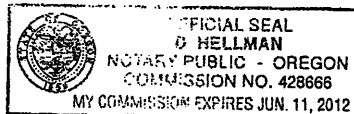
by \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_

by *Charles Sides*

as *Managing Member*

of *Aspen Pacific City, LLC*



*D. Hellman*  
Notary Public for Oregon

My commission expires *6-11-2012*

**REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)**

TO: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed, the estate now held by you under the same. Mail the reconveyance and documents to \_\_\_\_\_

DATED \_\_\_\_\_

Do not lose or destroy this Trust Deed OR THE NOTE which it secures.

Both should be delivered to the trustee for cancellation before reconveyance is made.

Beneficiary

**EXHIBIT** *4*

**PAGE** *2* **OF** *3*

**Exhibit "A"**

Real property in the County of Jackson, State of Oregon, described as follows:

THAT PORTION OF THE FOLLOWING DESCRIBED TRACT LYING NORTH OF THAT TRACT CONVEYED TO THE STATE OF OREGON, BY AND THROUGH ITS STATE HIGHWAY COMMISSION, BY DEED RECORDED IN VOLUME 501, PAGE 394, JACKSON COUNTY, OREGON, DEED RECORDS, TO WIT: BEGINNING AT A POINT IN THE CENTER OF THE COUNTY ROAD, 792.8 FEET WEST, AND 2654.9 FEET SOUTH OF THE NORTHWEST CORNER OF DONATION LAND CLAIM NO. 42, TOWNSHIP 38 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON; THENCE NORTH 85° 24' WEST, 72.90 FEET, ALONG THE CENTERLINE OF THE COUNTY ROAD; THENCE NORTH 64°16' WEST, 1647.4 FEET, ALONG THE CENTERLINE OF THE COUNTY ROAD, TO THE NORTHEAST CORNER OF TRACT DESCRIBED IN VOLUME 261, PAGE 22, JACKSON COUNTY, OREGON, DEED RECORDS THENCE SOUTH, 2646.2 FEET; THENCE SOUTH 36°00' EAST, 552.2 FEET; THENCE SOUTH 49°36' EAST, 264.9 FEET, TO THE SOUTH LINE OF DONATION LAND CLAIM NO. 73, TOWNSHIP 38 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON; THENCE SOUTH 89°34' EAST, 1029.6 FEET, ALONG THE SOUTH LINE OF SAID CLAIM NO. 73; AND CLAIM NO. 74, SAID TOWNSHIP AND RANGE; THENCE NORTH 0°01' EAST, 2551.2 FEET, TO THE POINT OF BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.

Tax Parcel Number: 1-012382-0

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